



WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE SPENCER BLACK

FROM: Rachel E. Letzing, Senior Staff Attorney

RE: Recommendations to the Assembly Natural Resources Committee Regarding Clearinghouse Rule 05-058, Revisions to Section NR 115, Wis. Adm. Code, Wisconsin's Shoreland Management Program

DATE: September 8, 2009

At your request, this memorandum is a compilation of recommendations by persons who either testified at the September 2, 2009 public hearing of the Assembly Natural Resources Committee regarding Clearinghouse Rule 05-058, revising Wisconsin's Shoreland Management Program or submitted written testimony to the committee regarding the proposed rule.

The recommendations are grouped in this memorandum under the following headings: impervious surfaces; height of structures; building setbacks; nonconforming uses; vegetation; applicability; and administration and implementation. Some of the recommendations could be placed in more than one group but each recommendation is placed in the most appropriate category rather than placing a recommendation in more than one group. Following each individual recommendation is a notation of the legislator or member of the public who submitted it. The recommendations are limited to those which recommend specific changes to the rule, and do not include recommendations regarding changes to state statute.

IMPERVIOUS SURFACES

Proposed Rule

The proposed rule requires counties to establish impervious surface standards that apply to the construction, reconstruction, expansion, replacement, or relocation of any impervious surface, including rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed and constructed to be pervious, but excluding frozen soil. The percentage of impervious surface must be calculated by dividing the surface area of existing and proposed impervious surfaces on a shoreland lot or parcel by the total surface area of that shoreland lot or parcel. A county may allow up to 15% impervious surface on a shoreland lot, where this percentage is based upon the surface area of existing and proposed

impervious surfaces. A county may allow up to 30% impervious surface on a shoreland lot if the county issues a permit requiring a mitigation plan that contains measures the county determines adequate to offset the impacts of the impervious surface on water quality, near-short aquatic habitat, upland wildlife habitat, and natural scenic beauty. The proposed rule states that it does not prohibit routine maintenance of all impervious surfaces that existed on the rule's effective date, or replacement of existing driveways, walkways, patios, or similar surfaces at grade level. The impervious surface standards apply in the "shoreland," which is the land up to 1,000 feet from a navigable lake, pond, or flowage, or up to 300 feet from a navigable river or stream (or to the landward side of the floodplain of a river or stream, whichever distance is greater). Measurement is from the ordinary high-water mark.

Recommendations

1. Object to applying the impervious surface requirements of the rule 1,000 feet from the ordinary high-water mark. Recommend instead that the requirements apply 300 feet from the ordinary high-water mark. [Senator Jim Holprin; Representative Dan Meyer; Jay Verhulst, Taxpayers for Fair Zoning; Wisconsin County Code Administrators; Paul A. Kuhn, Lake Tomahawk, WI.]

2. Calculation of allowable impervious surface area should be based on the area of the lot within 200 feet of the ordinary high-water mark. The impervious surface area percentage should be the area of impervious surface within 200 feet of the ordinary high-water mark divided by the area of the lot within 200 feet of the ordinary high-water mark times 100%. [Roger Dreher, Bayfield County Lakes Forum.]

3. Modify the rule to provide reasonable accommodations for communities and businesses in the shoreland zone. [Joe Handrick, Town Chairman, Town of Minoqua.]

4. Delete the impervious surface requirements and applicability within 1,000 feet from the ordinary high-water mark. Instead, require only riparian lots to have up to 20% impervious surface, with no mitigation, and up to 30% impervious surface with mitigation, with the flexibility for counties to be more restrictive. [Karl Jennrich, Zoning Director, Oneida County.]

5. Redraft the rules in a way that recognizes that urban waterfront development and redevelopment may and often should be dense, compact, have higher levels of impervious surface and exceed 35 feet in height. [Curt Witynski, League of Municipalities.]

6. Object to the impervious surface requirements and applicability within 1000 feet of the ordinary high-water mark. In the alternative, modify the rule to apply a 15% impervious surface standard to shoreland lots within 150 feet or 200 feet of the ordinary high-water mark and have no impervious surface requirements beyond this distance. Another alternative is to modify the rule to allow up to 20% impervious surface within a distance of 150 to 200 feet from the ordinary high-water mark and up to 40% impervious surface with mitigation beyond a distance of 150 to 200 feet from the ordinary high-water mark. [Richard Stadelman, Wisconsin Towns Association.]

7. Remove the 15% impervious surface limit and replace it with a 20% limit. [Wisconsin County Code Administrators; Jim Erdman, Town Supervisor, Town of Oshkosh.]

8. Amend the rule to specify that mitigation plans are not required for projects with conforming setbacks regardless of the amount of impervious surfaces. Require impervious surface limits only for

riparian lots that exceed 30% surface coverage. [Julie A. Anderson, Director, Racine County Planning and Development.]

9. Delete the impervious surface limitations. [Mark Schumacher, Director, Waushara County Land Conservation and Zoning.]

10. Remove the 15% impervious surface limit. [Ed Kissinger, Silver Lake Management Board of Directors, Wautoma, WI.]

HEIGHT OF STRUCTURES

Proposed Rule

The proposed rule adds a new height requirement, which limits structures within 75 feet of the ordinary high-water mark to a height of no more than 35 feet.

Recommendations

1. Add a provision to define building height measurement as the vertical distance from the lowest point on the structure which faces the adjacent water body to the highest point on the roof including decorative appendages such as cupolas but excluding utilitarian appendages such as antennae, chimneys, and vents. [Roger Dreher, Bayfield County Lakes Forum.]

2. Add a provision that explains how to measure the 35-foot height restriction. [Jay Verhulst, Taxpayers for Fair Zoning.]

3. Amend the rule to authorize each county to utilize their own definition of building height. [Julie A. Anderson, Director, Racine County Planning and Development.]

BUILDING SETBACKS

Proposed Rule

Under the proposed rule, the basic 75-foot setback, floodplain requirements, and specific limits on boathouses provided in the current rule continue to apply. The proposed rule adds a definition of "existing development pattern," under which principal structures must exist within 200 feet of a proposed principal structure in both directions along the shoreline, and specifies that where an existing development pattern exists, the setback for a proposed principal structure may be reduced to the average setbacks of the principal structure on each adjacent lot but not reduced to less than 35 feet from the ordinary high-water mark.

Recommendations

1. Define the setback from the ordinary high-water mark as the horizontal distance from the ordinary high-water mark to the part of the structure nearest to the ordinary high-water mark. The nearest part of the structure may be roof overhangs, alcoves, stairs, decks, and other features which extend beyond the main walls or foundation. [Roger Dreher, Bayfield County Lakes Forum.]

2. Include language from a previous draft of the rule to address the location of the ordinary high-water mark: "If a wetland extends more than 40 feet between open water and the wetland/upland boundary, the county may establish a setback of 35 feet landward from the wetland/upland boundary." [Karl Jennrich, Zoning Director, Oneida County.]

3. Modify the rule to allow setback averaging and principle structure replacement without mitigation. [Jim Erdman, Town Supervisor, Town of Oshkosh.]

4. Exempt small objects that are easily moved by hand, such as canoes, kayaks, Jon boats, sailboats, boat lifts and piers, from the setback standards. [Julie A. Anderson, Director, Racine County Planning and Development.]

NONCONFORMING USES

Proposed Rule

The proposed rule retains the current provisions on nonconforming use of temporary structures, discontinued nonconforming use, and nonconforming boathouse maintenance, and repeals the provision setting forth the 50% valuation limit on altering, adding to, or repairing nonconforming buildings.

The proposed rule specifies new standards regarding the repair, altering, or replacement of an existing principal structure that was lawfully placed when constructed and does not comply with the current 75-foot setback requirement. This type of structure may be maintained and repaired within its existing building envelope.

These structures may be expanded beyond their existing building envelopes or replaced or relocated under specified conditions. These conditions include that the structure's use has not been discontinued for 12 or more months; the structure is at least 35 feet from the ordinary high-water mark; no portions of the expanded, replaced, or relocated structure will be located any closer to the ordinary high-water mark than the closest point of the existing structure; the county issues a permit requiring a mitigation plan that contains measures the county determines adequate to offset the impacts of the impervious surface on water quality, near-short aquatic habitat, upland wildlife habitat and natural scenic beauty (this permit requirement does not apply to an expansion if all portions of the expansion are more than 75 feet from the ordinary high-water mark); and all other provisions of the shoreland ordinance are met.

The proposed rule specifies additional standards applicable to replacing or relocating one of these nonconforming principal structures: the county must determine that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the basic 75-foot shoreline setback requirement; and the county issues a permit that requires all other structures on the lot, that do not comply with the 75-foot shoreline setback requirement and are not exempt from it, to be removed by the date specified in the permit.

Recommendations

1. Allow lateral expansion of nonconforming structures no closer than 50 feet of the ordinary high-water mark and require mitigation to include restoration of a vegetative buffer of at least 25 feet in depth between the structure and the ordinary high-water mark. [Roger Dreher, Bayfield County Lakes Forum.]
2. Delete the provision in the section regarding replacement or relocation of a nonconforming principal structure, which specifies that all other provisions of the shoreland ordinance must be met. [Karl Jennrich, Zoning Director, Oneida County.]
3. Create a provision to allow principal structures less than 75 feet from the ordinary high-water mark to be reconstructed or replaced. [Karl Jennrich, Zoning Director, Oneida County.]
4. Create a provision to allow replacement or alteration of all types of accessory structures. [Karl Jennrich, Zoning Director, Oneida County.]

VEGETATION

Proposed Rule

The proposed rule requires the county ordinance to designate a vegetative buffer zone for at least 35 feet inland from the ordinary high-water mark and to prohibit the removal of vegetation in this zone, except that a county may allow any of the following: routine vegetation maintenance; removal of trees and shrubbery in the zone to create access and viewing corridors (whose combined width on a riparian lot must be the lesser of 30% of the shoreline frontage or 200 feet); removal of trees and shrubs in a zone on a parcel with 10 or more acres of forested land consistent with specified forestry management practices; removal of vegetation within the zone to manage exotic or invasive species, or damaged, diseased or hazardous vegetation, provided removed vegetation is replaced by replanting as soon as practicable; and additional vegetative management activities in the zone by permit under specified conditions. New boathouses must be located within the access and viewing corridor.

Recommendations

1. Permit counties to establish their own regulations for shoreland buffers. [Jay Verhulst, Taxpayers for Fair Zoning.]
2. Delete buffer zone requirements. [John Buckstaff, Oneida County and Dave Hirsch, Oshkosh.]
3. Remove the buffer zone requirement and create a voluntary buffer program. [Jim Erdman, Town Supervisor, Town of Oshkosh.]
4. Modify the rule to address human health and safety concerns created by provisions which would not allow property owners to maintain fire safety for their homes. [Sandra Verhulst, Foundation for Common Sense.]

5. Specify that any vegetation removal regulations apply only to riparian lots. [Julie A. Anderson, Director, Racine County Planning and Development.]

6. Allow counties to set the maximum square foot limit on the size of a boathouse. [Jay Verhulst, Taxpayers for Fair Zoning.]

7. Exempt the location of boathouses from the setback standards and provide that boathouses are not required to be within the "access and viewing corridor". [Julie A. Anderson, Director, Racine County Planning and Development.]

APPLICABILITY

Proposed Rule

The proposed rule provides that its provisions apply to unincorporated shoreland areas and to county, city or village regulation of previously unincorporated areas that were annexed by a city or village after May 7, 1982, or incorporated as a city or village after April 30, 1994.

Recommendations

1. Either exempt town centers located within 1,000 feet from the shoreland from the provisions of the rule or give waiver authority to counties to apply the provisions of the rule appropriately in their communities. [Representative Dan Meyer.]

2. Specify that the new standards will only apply to areas annexed after promulgation of the revised rule. [Curt Witynski, League of Municipalities.]

3. Exempt smaller riparian lots from the rule. [Greg and Jean Jeske, Nekoosa, WI.]

ADMINISTRATION AND IMPLEMENTATION

Proposed Rule

The proposed rule requires counties to review all land divisions in shoreland areas which create three or more parcels or building sites of five acres each or less within a five-year period, and specifies the factors the review must consider.

The proposed rule specifies that the shoreland ordinance adopted by each county must require written notice to the appropriate Department of Natural Resources (DNR) regional office at least 10 days prior to any hearing on a proposed variance, special exception or permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review. Upon DNR request, a county must provide to the appropriate DNR regional office a copy of any permit issued for a nonconforming structure or use. The proposed rule also requires copies of any permit granted for a nonconforming structure or use, any decision on a variance, special exception or conditional use permit, or appeal of a map or text interpretation, and any decision to amend a map or text of an ordinance, to be submitted to the appropriate DNR regional office within 10 days after grant or denial.

Under the proposed rule, a county must amend its shoreland and subdivision ordinances to meet the minimum standards in the proposed rule within two years after the effective date of the rule.

Recommendations

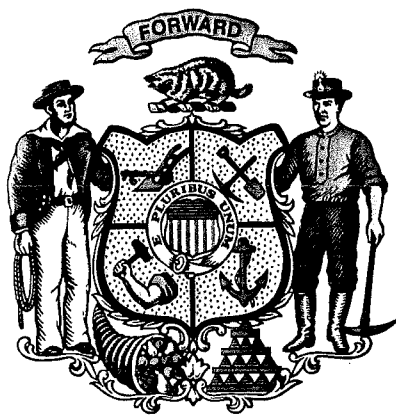
1. Remove the provision which requires counties to review all land divisions in shoreland areas which create three or more parcels or building sites of five acres each or less within a five-year period. [Karl Jennrich, Zoning Director, Oneida County.]

2. Remove the provisions which require written notice within 10 days to regional offices of DNR when a permit is issued for a structure with a setback less than 75 feet; and require submission to the appropriate regional office of DNR copies of all proposed land divisions submitted to the county for review and copies of the grant or denial of any permit granted for a nonconforming use. [Karl Jennrich, Zoning Director, Oneida County.]

3. Modify the rule to allow counties a longer time to amend ordinances in order to comply with the rule. [Richard Stadelman, Wisconsin Towns Association; Mark Schumacher, Director, Waushara County Land Conservation and Zoning.]

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

REL:jal





Wisconsin
County Code
Administrators

September 8, 2009

Committee on Environment
Senator Mark Miller, Chairperson
Room 317 East
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Miller,

The WCCA would like to express its gratitude in allowing our organization to testify and express our concerns over the proposed NR115 revisions. The Wisconsin County Code Administrators Executive Board voted to refocus our efforts in preserving natural resource and using our expertise as county employees who administer and enforce NR115 in promulgating the new rules.

Our organization still has concerns and comments on the following proposed rules:

NR 115.05(1)(e)3: Opposed to requiring nonriparian lots within the 1000'/300' shoreland jurisdiction to meet impervious surface limits. We feel that only the adjacent property has the most impact on the water resources; in addition, it would be feasible for us to administer the impervious surface limits within 300 feet of the shoreland.

NR 115.05(1)(e)3: Opposed to 15% impervious surface limit which creates numerous nonconforming structures/uses. We appreciate the adjustment from 10% to 15% in the draft, but since NR115 sets minimum state standards, a 20% limit would create fewer nonconforming structures/uses and counties can be more restrictive.

The most important item for our organization is **implementation**. We still feel the following items need to be addressed before the code is adopted by the State Legislation.

- 1) Provision of state monies (like non-point-DATCP funds) to counties for NR115 implementation and administration. Competing for a lake protection grant to implement and administer the shoreland program is not an acceptable alternative as there is no assurance of continual financial support. Grant money can not be used for enforcing shoreland zoning regulations.
- 2) Training/Education programs.
- 3) Availability of technical assistance in the field with adequate staffing by the Department to serve all counties.

- 4) The need to shift responsibilities to other agencies (state/local) for certain portions of code compliance (i.e., shoreland restoration, mitigation).
- 5) Education of general public, contractors, etc.

We ask that training/education programs be available, education to the general public be available, and water management specialist be available to assist the counties in this implementation. As the Department of Natural Resources cuts staff, water management specialists are not being replaced causing our zoning departments not to get support we need from the Department of Natural Resources.

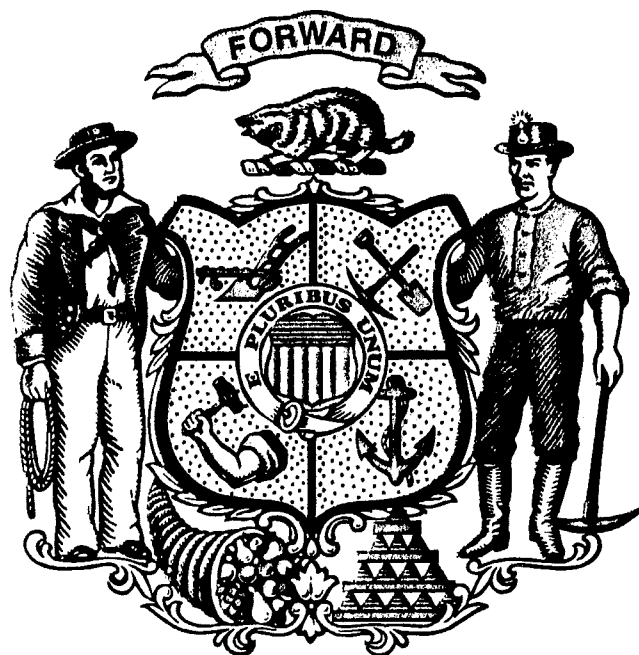
We again want to thank the Committee on Environment for this opportunity to express our concerns of the proposed rule. We hope that our concerns still can be addressed as we are the front line educators, administrators, enforcers, and defenders of the great responsibility and challenge of protecting our water resources.

Sincerely,

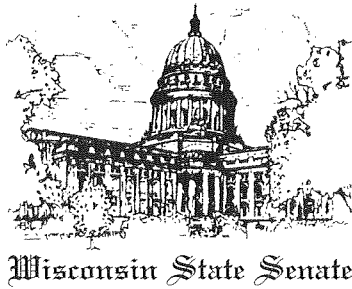


Michelle Staff
WCCA President
Jefferson County Planning and Zoning Department
320 S. Main St. Rm. 201
Jefferson, WI 53549

Cc Via E-Mail: Senator Robert Jauch
Senator Robert Wirth
Senator Neal Kedzie
Senator Luther Olsen
WCCA Executive Board



MICHAEL G. ELLIS
STATE SENATOR



19TH SENATE DISTRICT

September 9, 2009

Senator Mark Miller
Chair, Senate Committee on Environment
317 South, State Capitol
Madison, WI 53707

Dear Senator Miller:

Enclosed is correspondence I received from Jack Brauer of Oshkosh, WI who is concerned about the proposed NR 115 shoreland zoning rules that are the subject of a public hearing before the Senate Committee on Environment on September 10, 2009.

Mr. Brauer is unable to attend the hearing and has asked me to forward his comments on the proposed rule to the committee.

Thank you for your consideration.

Sincerely,

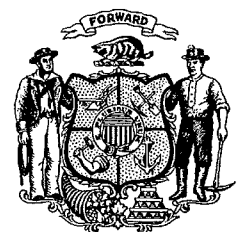


MICHAEL G. ELLIS
State Senator
19th Senate District

Enclosure

cc Members of the Senate Committee on Environment







Wisconsin Builders Association

DATE: September 10, 2009

FROM: Brad Boycks, Director of Governmental and Political Affairs
Patrick Stevens, Director for Development Council and Regulatory Affairs

TO: Assembly Natural Resources Committee

RE: Shoreland Zoning Rules (NR115)

The Wisconsin Builders Association (WBA) is a state-wide association consisting of more than 7000 members dedicated to preserving and promoting the American Dream of home ownership by advocating for quality, safe and affordable housing. Our members are committed to providing housing for the citizens of Wisconsin, and at the same time protecting Wisconsin's valuable natural resources.

Initially, it should be noted that this rule has a broad reach, and will impact landowners, builders and developers. "Shorelands" are defined in statute as lands within 1000 feet of a navigable lake, pond or flowage, and within 300 feet of a navigable river or stream. Streams are generally considered navigable if a canoe can be floated in them. In addition, this rule applies to unincorporated areas. Moreover, pursuant to state statute (Wis. Stat. § 59.692), for lands annexed after May 7, 1982 and for cities or villages incorporated after April 30, 1994, shoreland zoning ordinances in place at the time of the annexation or incorporation apply (the proposed rule language is not clear on this point).

With that as background, WBA accepted the rule package before you as a compromise that we support. As a whole, the rule package before you has been substantially improved and significantly simplified. There however, parts of the rule, most notably the impervious surface provisions, which will be challenging. The success or failure of these provisions will be seen through implementation. As such, we encourage the Legislature as well as the DNR to monitor the impacts of the impervious surface limits carefully.

One of the positives contained in the rule proposal relates to what may be done to structures within the 75 foot setback area. The current shoreland zoning rule contains a provision specifying that counties can prohibit an alteration, repair or addition to an existing structure in excess of 50% of its equalized value. Under the proposed rule, any



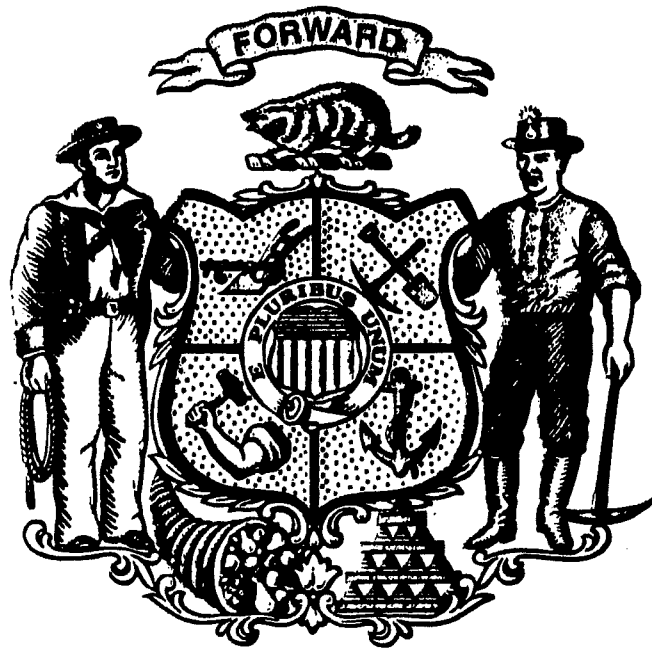
4868 High Crossing Boulevard • Madison, Wisconsin 53704-7403
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www.wisbuild.org

structure in this area can have unlimited repair and remodeling if it maintains its current building envelop, regardless of cost. Expansions outside the first 35 feet are also allowed, regardless of cost, if the impervious limits and other requirements are met.

We also appreciated the fact that a number of the provisions in this rule package were substantially improved from our perspective compared to the draft to this rule that went to hearing in 2007. For example:

- DNR had proposed doubling the minimum lot sizes for lots in sewerred areas from 10,000 square feet with an average width of 65 feet, to 20,000 feet, with an average width of 100 feet. This rule package maintains current lot sizes.
- For new construction, DNR had proposed requiring mitigation at sites with 10% impervious surfaces, and limiting the total amount of impervious surface to 20%. Under the proposal before the Committee, mitigation would be required if there was more than 15% impervious surface, with a limit of 30%.
- DNR eliminated a proposed 35 foot height limitation beyond the 75 foot setback area.

That being said, we would again encourage the Legislature to keep a close eye on the implementation of this rule, particularly in regard to the new impervious surface limits, and monitor the need for any changes that may be needed in the future. We continue to hear questions and concerns about the application of these standards 1000 feet from a lake, the mitigation provisions, and impact of the 30% cap, particularly on small lots. Consequently, assuming the rule goes through as proposed, it will be important to track its application to ensure that any unintended negative consequences are corrected.





RIVER ALLIANCE of Wisconsin

September 10, 2009

Senator Mark Miller, Chair, Senate Committee on the Environment
Members of the Senate Committee on the Environment
300 Southeast
State Capitol

Dear Senator Miller and Members of the Senate Committee on the Environment:

RE: CR 05-058, Shoreland Zoning

The River Alliance of Wisconsin recommends your approval of the proposed revisions to NR 115. As a member of the advisory committee to the Department of Natural Resources throughout the course of the rule revision process, we believe the proposal strikes the best balance possible. It provides flexibility for the counties to address the unique characteristics of their landscapes, waterways and existing development patterns, and provides clear, straight-forward minimum standards that should alleviate the inconsistent and sometimes unfortunate interpretation and application of the rules that has occurred over the last 40-plus years.

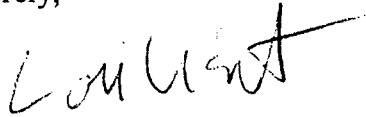
As an organization with protection and restoration of Wisconsin's rivers and streams as our mission, we have of course advocated for the most protective rule provisions possible. At the same time, we realize it would be impossible and unreasonable to apply our ideal set of regulations to every lake and river in the state. The proposed rule directly addresses the two aspects of shoreland development that have the most detrimental impacts on our waterways: removing shoreland vegetation and creating excess impervious surfaces. Limiting the amount of impervious surface that can be created and strengthening controls on vegetation removal are two giant steps forward in resource protection. In combination the standards proposed are very reasonable, especially in the most difficult situations to regulate fairly – that is, areas with substantial existing waterfront development. For areas with less development and a high degree of intact natural shoreline, counties will need to step up to the plate and build on the state's minimum standards.

While the development setbacks and vegetation retention requirements of course apply only to development of lots immediately adjacent to waterways, it is critical to the balanced approach of this rule that the impervious surface standards apply throughout the shoreland zone – 1000 feet from lakes and 300 feet from rivers and streams. This proposal is based on multiple studies, in Wisconsin and throughout the country (see attached), that demonstrate significant degradation of waterways with more than 10% impervious area in the *entire watershed*. Allowing up to 30% impervious surface in the portion of the watershed closest to the waterway, with no limit throughout the rest of the

watershed, is already a significant compromise from the threshold dictated by science and should not be altered.

Thank you for the opportunity to comment on the proposal; it is time to approve new shoreland development standards, and this proposal is the right one for Wisconsin.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Grant", with a long horizontal stroke extending to the right.

Lori Grant
River Protection Program



RIVER ALLIANCE of Wisconsin

Impacts of Development on Waterways

A. Removal of natural vegetation in a watershed degrades waterways

- Natural vegetation captures rain and allows it to evaporate. Roots and matted understory act as a sponge, holding water and allowing it to be taken up by plants and to percolate slowly into soil to replenish groundwater. Vegetation also captures pollutants carried in runoff and prevents them from entering waterways. Studies have shown that when as little as 15% of a watershed is cleared, *significant damage to streams can occur*. Damage to streams can begin when as little as 5% of natural land cover is removed. When at least 65% of natural land cover is preserved, a great deal of damage to the resource can be prevented¹.
- While maintaining natural vegetation throughout a watershed is important to the health of waterways, it is of critical importance immediately to adjacent to waterways. Trees and grasses overhanging water provide shade to control temperatures, and drop leaves which provide organic materials. Over time, trees and branches topple into the water and provide resting and hiding places for fish. Terrestrial insects drop in and provide a food source; studies have discovered that some fish, during certain seasons, rely almost exclusively on terrestrial insects. Removal of adjacent vegetation results in significant reductions in invertebrate and fish production. Studies have observed fish travel levels to be 2.5 higher and feeding rates 7 times higher along undeveloped shorelines as opposed to lakeshore lawns².
- In addition to providing physical benefits to waterways, maintaining adequate natural vegetation adjacent to streams and lakes prevents pollutants and sediments from entering the water through stormwater runoff. The most common pollutants are:

¹ Booth, D. and L. Reinelt, 1993. Consequences of Urbanization on Aquatic Systems – Measured Effects, Degradation Thresholds, and Corrective Strategies. In: Proceedings of Watershed 93. A National Conference on Watershed Management, March 21-24, 1993, Alexandria, Virginia, pp. 545-550.

² Bernthal, T, 1997. Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. WI DNR PUBL-WI-505-97

- ◆ Phosphorus, the leading cause of algae and weed growth in lakes and rivers; the more shallow the lake, the greater its effect. One pound of phosphorus produces 500 pounds of algae.
- ◆ Nitrogen, also spurs weed growth, and breaks down into nitrates and ammonia, which can have toxic effects on invertebrates and fish.
- ◆ Fine sediments, have the biggest impact on streams, even at low levels, gradually degrading stream habitat, disrupting food sources and reducing fish reproduction success. Sediments fill in rocky streambeds, burying invertebrates and other food sources and smothering fish eggs. Large quantities of sediments can alter or block stream courses, leading to flooding and property damage.

B. Addition of impervious surface exacerbates waterway degradation

- Removal of vegetation increases the rate and volume of stormwater runoff; the addition of impervious surfaces provides a multiplier effect. With 1.5 inches of rain, pavement results in a 24-fold increase in the volume of runoff as grass. One pound of soil in a lawn holds 24% less water than one pound of soil in a forest and 15% less water than in a pound of pasture land. With big rains, the increased amount and velocity of runoff causes erosion, flooding, scours banks and bottoms washing away fish hiding places and eggs, eventually widening river channels and changing the habitat. When rain hits sun-warmed surfaces such as driveways and roofs, the runoff is also warmed, affecting the temperature of waterways receiving the runoff: warmer water holds less oxygen, impacting fish that need cool, clean water to survive.
- Just as the amount of clearing in a basin affects waterways, there is a clear link between percent of impervious surface and impairment of waters. Studies of 47 streams in Southeastern Wisconsin find a strong threshold of environmental damage to streams at or near 10 percent of imperviousness across a watershed³. The published study also cites similar findings across the nation: in Maryland, stream quality impairment became evident when watershed imperviousness reached 12 percent; in Washington State, stream studies and modeling reported a 10 percent threshold for declines in water quality, physical

³ Wang, L., J. Lyons, P. Kanehl, R. Bannerman and E. Emmons, 2001. Watershed Urbanization and Changes in Fish Communities in Southeastern Wisconsin Streams. Paper No. 99001 of the *Journal of the American Water Resources Association*.

habitat and biological integrity; and a review of a large number of studies from the east and west coasts concluded that hydrological, physical, chemical and biological characteristics of streams declined precipitously beyond 8 to 15 percent imperviousness, with 10 percent being the most commonly reported threshold.

- Local studies have also found that the proximity of impervious surface to a waterway is critical. One acre of impervious surface within 330 feet of a stream has the same negative impacts on fish populations as 10 acres of impervious surface greater than 330 feet from the stream⁴.
- Stormwater also picks up pollutants, including moss retardants from roof, oils and antifreeze residue on driveways and roads, excess fertilizer and naturally occurring components of soils such as phosphorus and nitrogen, and carries them straight into water. Lawns contribute 7 times as much phosphorus and 10 times as much nitrogen as forestland (2001-2002 USGS study in Forest and Vilas Counties). In Maine, two geographically comparable watersheds, one completely forested and the other with 40% intact forest plus a subdivision of one home per acre density, were studied. The partially developed watershed had 72% higher export of phosphorus into the water. In Dane County, studies showed the greatest increases in phosphorus in waterways with previously undisturbed riparian areas converted to urban or agricultural uses. In Lac La Belle, studies showed that increases in residential densities lead to increases in phosphorus loading, even when septic systems are replaced with sewers.
- In short, when natural riparian areas are converted to lawns and impervious surfaces added, increased runoff causes erosion, adds pollutants, increases stream temperatures, and degrades water quality and habitat.

C. Solutions

- Under its obligation to protect the public interest in navigable waters, including all those interests considered by common law, the state must enact rules that limit stormwater runoff. The simplest, least expensive means is clearly through limitation of land clearing, conversion of natural vegetation to grass and addition of impervious surfaces, especially in close proximity to waterways. Across the nation, local and state rules have mandated vegetated buffers adjacent to waterways to capture runoff and the pollutants and sediments carried by runoff. Studies have found a range of fully vegetated buffer widths

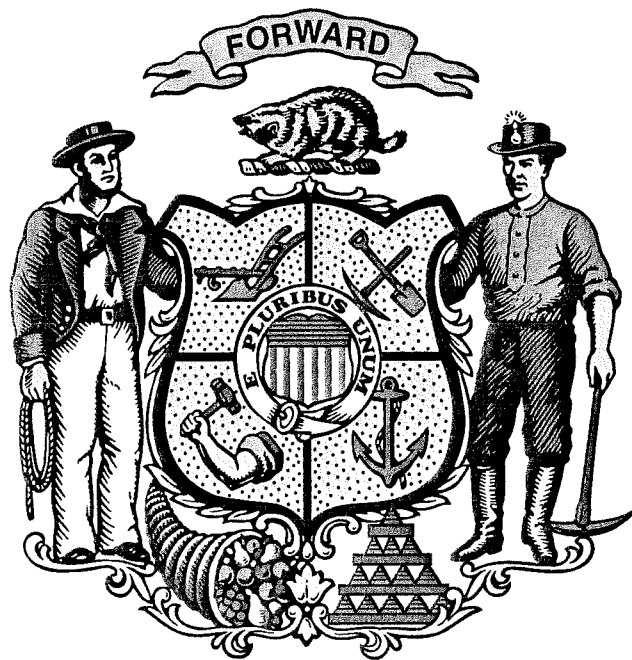
⁴ Wang, L., J. Lyons, P. Kanehl and R. Bannerman, 2001. Impacts of Urbanization on Stream Habitat and Fish Across Multiple Spatial Scales. WI DNR Environmental Management Vol. 28, No. 2, pp. 255-266

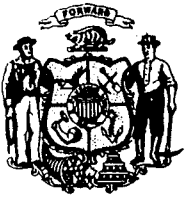
based on topography to be effective in removing pollutants and sediments:

- ◆ 35 feet can remove 60% of phosphorus, nitrogen and Total Suspended Solids
 - ◆ 25 feet achieves 70% sediment removal; 80 feet removes 80%
 - ◆ 200 feet removes 80% Total Suspended Solids
 - ◆ 200 feet removes 80% nitrogen
 - ◆ 115 feet removes 70% phosphorus; 275 feet removes 80%⁵
- A similar analysis in Georgia found that 100 feet of buffer is sufficient to trap sediments in most circumstances, unless there is a significant slope to the water. 100 feet was also found to be sufficient to capture phosphorus, and that "35 to 100 feet *native forested riparian buffers* should be restored along all streams."⁶

⁵ Desbonnet, A., V. Lee, P. Pogue, D. Reis, J. Boyd, J.Y. Willis and M. Imperial, 1995. Development of Coastal Vegetated Buffer Programs. Coastal Management 23:91-109.

⁶ Wengers, S. 1999. A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation. Institute of Ecology, University of Georgia.





JIM HOLPERIN
STATE SENATOR

**Testimony for
SENATE ENVIRONMENT COMMITTEE
Senator Jim Holperin
September 10, 2009**

I recommend that the Committee object to applying the impervious surface requirements of this rule 1,000 feet from the ordinary high water mark. I recommend application 300 feet back from the shore, for the following 3 reasons:

1. Equity. Everyone knows that lakeshore development occurs close to the shore. State rules currently require a 75 foot setback, which the newest version of the rule doesn't change, so that's typically where building starts. Perhaps 90% of lakeshore building is located from 75 to 200 feet back from the water's edge.

This new rule allows 30% of a lake lot to be covered by impervious surfaces like roofs, decks, driveways, garages and patios.

If my lot is 100 feet wide at the water and 300 feet deep, I have a 30,000 square foot piece of property. Do the math and I can have 9,000 square feet of impervious surface on my lot, with mitigation.

If my next door neighbor's lot is 100 feet wide at the water, but 700 feet deep, my neighbor can have 21,000 feet of impervious surface. Our houses are right next to each other. How is that fair? It's not, and the inconsistency of allowing properties located side by side to have vastly different impermeable surface allowances

will require each of us to try to explain to our voters, over and over, why we allowed this to happen. They will say, "it doesn't make sense!" Eventually we will have to concede that it doesn't and change the rule. Why not do that from the get go?

2. Environmental protection. This rule is correct to recognize that what's most critical to maintaining and improving water quality is the amount of run off that gets into a lake or stream. That's what impervious surface restrictions are designed to do.

But consider again the example I used above, and remember that almost all lakeshore buildings are typically clustered in the first 200 feet back from the lake.

The owner of a 100 x 300 foot lake lot is allowed 9,000 square feet of impervious surface. An adjacent parcel, which may happen to be 500 feet deep, is allowed 15,000 square feet. Another parcel on the same shore, but 700 feet deep, is allowed 21,000 square feet, all with mitigation. How is that good for the environment?

3. Enforcement. As environmentalists who care about lake and stream water quality I believe we need to be most concerned with what goes on nearest the water...in the first 300 feet back from the shore ...where most "lakeshore" construction and activity occurs.

But this rule, applied back 1,000 feet from the water's edge, is going to affect thousands and thousands of off water back lots. Many of these are existing small lots located along town and county roads. You can't see the water from them. Wait till these folks discover they can't replace a one car garage with a two car model because they are "too close to the water." They will say, "it doesn't make sense"...although they will probably say it differently than that...and they will be right.

As you will hear from others today, county zoning offices don't have the staff and, believe me, will not hire the staff to start dealing with these thousands and thousands of off water back lots. And you know the legislature is not going to authorize the DNR to hire more zoning enforcement personnel. The outcome will be fewer staff resources available to monitor the properties closest to the lake...the very properties that should be the focus of our limited resources.

My home county, Vilas County, has over 1,300 lakes. Vilas County is deeply concerned with water quality. Vilas County has had an impervious surface requirement in their shoreland zoning ordinance for over 10 years. Zoning Administrator Dawn Schmidt testified at our hearing up north last

week that the rule is working fine. It applies back 300 feet from the water's edge.

The rule is equitable. It applies back 300 feet from the shore, thus limiting impervious surfaces nearest the lake to 9,000 feet (with mitigation) for every 100 feet of lake frontage for everybody.

The rule is environmentally responsible since it concentrates on limiting runoff which is most likely to get into the lake.

The rule is enforceable. Dawn says her office gets very few calls or complaints about the rule's provisions. She receives only a half dozen or fewer requests each year for variances from the rule. Lake homeowners have very few problems with mitigation strategies when those are required.

Langlade County, another county with a large concentration of inland lakes, has had an impervious surface rule in place for several years. It applies back only 300 feet, so it is equitable and enforceable. There have been very few problems with that rule according to Zoning Administrator Becky Fritsch.

Again, committee members, my advice and request is to object to applying the impervious surface requirements of this rule back 1,000 feet from the water's edge. 300 feet is the better distance for all the reasons I mentioned.

Now, with the committee's consent, I would like to add just one additional comment.

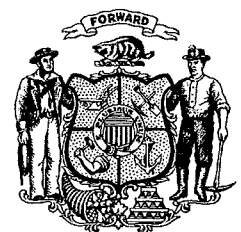
This rule, like all state shoreland regulations, applies only to unincorporated areas. Cities, villages and any incorporated areas are completely exempt. But most of you have visited Minocqua, many of you have been in Three Lakes or Elcho. These are small downtowns in unincorporated towns. NR 115 applies to them.

Most of you have also visited Eagle River, Crandon or White Lake. These small downtowns, similar in every way to Minocqua and Three Lakes and Elcho, are incorporated and so NR 115 doesn't apply to them.

Next week I will be offering separate legislation exempting just the downtown areas of unincorporated towns from NR 115. I hope you can support that legislation.



WISCONSIN STATE LEGISLATURE





State Senator
Neal J. Kedzie

11th Senate District

September 10, 2009

State Senator Mark Miller
Chair, Senate Environment Committee
Room 317-East, State Capitol
Madison, WI

Dear Senator Miller,

Thank you for the opportunity to allow the Senate Environment Committee appropriate review of Clearinghouse Rule 05-058, relating to revisions to Wisconsin's Shoreland Management Program under Administrative Code NR 115. After hearing and reading the testimony provided, I believe revisions to this rule are necessary before the Committee grants its approval.

As you know, this particular rule has been crafted over the last several years, with a great deal of input from numerous interested and affected parties. I do share the sentiment this rule is a more sound policy than its predecessors and commend the Department of Natural Resources for its diligence in reaching compromise on a variety of contentious issues. That being said, the Legislature has the final determination of which policies will be implemented and which should receive additional review and consideration. I believe CR 05-058 falls into the latter category.

Specifically, I share the concerns of many who testified – including the Chair of the Senate Natural Resources Committee – that the impervious surface standard of a 1,000 foot setback from any lake needs to be restored to 300 feet. The testimony submitted offers a valid argument that if the 1,000 foot setback is approved, it would create disproportionate regulation across the state, zoning inconsistencies from one parcel to the next, increased enforcement and regulatory burdens for County governments, and stifle economic growth and development in rural communities.

For those reasons, I respectfully request the Senate Environment Committee temporarily suspend the administrative rule process for Clearinghouse Rule 05-058 to address that issue, and any other issue it deems necessary. Thank you for your attention and consideration of this matter.

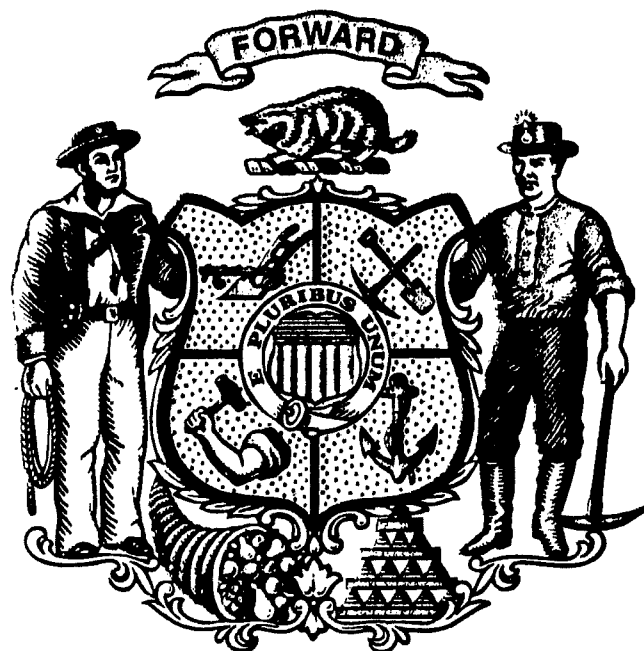
Sincerely,

Neal Kedzie
State Senator
11th Senate District

NJK: dj

CC: Senate Environment Committee members

Office: State Capitol • Post Office Box 7882 • Madison, Wisconsin 53707-7882
(608) 266-2635 • Fax: (608) 267-5172 • Toll-Free: 1 (800) 578-1457 • Sen.Kedzie@legis.wisconsin.gov
District: N7661 Highway 12 • Elkhorn, Wisconsin 53121 • (262) 742-2025





State Representative

Dan Meyer

Senate Committee on the Environment

Testimony on NR 115

September 10, 2009

Committee Members:

I appreciate the opportunity to comment on the proposed changes to shoreland zoning rules, referenced as Natural Resources rule (NR) 115. As State Representative of an area with some of the densest concentration of lakes, I have heard extensively from residents of the 34th Assembly District. By appearing before you, I intend to convey some of the concerns of those residents I represent.

This rule will impact communities in different ways, depending on what rules are currently in place. For example, some counties have the basic provisions of NR 115 in place, while others have a different set of regulations. For some unique town centers situated near lakeshores, the provisions of proposed NR 115 are unworkable.

Since the 1960's the definition of shoreland has been 1,000 feet of a lake or 300 feet from a river or stream. However, for the first time, this rule will apply enforcement to this whole distance. Obviously, riparian property owners are subject to the rule, but many non-riparian property owners will be newly subject to the rule. This is going to mean costs to counties and to landowners, perhaps at a time when both can least afford it.

I am further concerned that although the rule allows the lawful use and routine maintenance of nonconforming structures, by expanding this distance from shoreland, the state will have exponentially increased the number of "nonconforming structures." It would also appear the Department of Natural Resources maintains a goal of eventual removal of these properties.

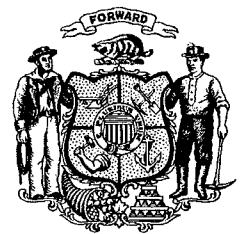
I believe that a compromise that would represent the goals of this rule while also taking into account many of the concerns of landowners would be extending its provisions to within 300 feet of shoreland, rather than within 1,000 feet of shoreland. Counties should have the ability under local control to determine what, if any, additional regulation takes place in excess of 300 feet distance from shoreland.

While the provisions of NR 115 do not apply to cities or villages, throughout our state there are unique town centers located within 1,000 feet from the shoreland. Either these areas should be exempt from the rule like cities or villages are, or counties ought to be given waiver authority to apply the provisions of NR 115 appropriately in their communities.

Coming from an area that contains thousands of lakes, rivers and streams, I have received comments that run the full gamut from total support to complete opposition to this rule. But in between this spectrum are valid concerns that should be addressed by this committee before the rule moves on.



WISCONSIN STATE LEGISLATURE



Testimony of Russ Rasmussen, Department of Natural Resources, on NR 115 Shoreland Protection Rules

Public Hearing of the Senate Committee on Environment
September 10, 2009

Thank you chairman Miller and members of the committee for the opportunity to come before you today on an important issue to the waters of our state – our shorelands. The rule that we are discussing today was first passed in 1968.

Tourism is a \$13 billion dollar a year industry in Wisconsin and one of the key reasons for that vibrant industry is our abundant, clean, rivers, lakes, wetlands and streams.

Fishing alone is a \$2.3 billion dollar industry in our state, supporting more than 30,000 jobs.

We know that recent studies have shown that a decline in water clarity reduces property values and that the high quality of our water resources is cited as a key reason why Wisconsin business executives rate our state high for our quality of life – a key ingredient in the recipe necessary to attract jobs to our state.

Yet, determining how we should protect our public waterways is a challenge when we also want to respect private property rights. Everyone wants to use our public waters for a variety of purposes which aren't always compatible. So I suppose it is no surprise that the rule before you today took seven years to develop.

Thirty public hearings statewide, eleven listening sessions, multiple Advisory Committee meetings, and over 10,000 individual comments – all to get to where we are today.

I also want to publicly thank several great DNR staff members for their tremendous efforts on this rule. Gregg Breese and Liesa Lehmann in particular worked tirelessly to get this package completed.

In 2002, the Department of Natural Resources began the process to revise the state's shoreland protection rules, known as NR 115. The final revisions to NR 115, adopted by our Natural Resources Board in late June, were the result of balancing all the public comments on the last public hearing draft. These rule revisions update the standards for development within 1000 feet of a lake or within 300 feet of a stream or river, which are the distances established as the defined water quality management area in Wisconsin law.

The rule revisions achieve three important goals:

1. The revisions provide **greater flexibility for shoreland owners** to maintain their existing homes and property, and even to expand their footprint in exchange for offsetting the impacts of their development.
2. The revisions **improve protection for water quality, habitat and natural scenic beauty** through clear limits on impervious surfaces, vegetation clearing and building height near shore.

Why are we revising these rules?

Development patterns along our lakes and rivers have changed significantly, from the small, family cottage of 40 years ago, to the larger year-round homes and multi-family development of today.

Over time, many counties have gone beyond the standards of NR 115 to adopt innovative approaches, but they are looking for up-to-date statewide rules to provide better clarity and allow for consistent statewide application of standards. Ongoing scientific research has shown that revised minimum standards, especially relating to impervious surfaces, are critical to protecting Wisconsin lakes and streams.

The current proposal recognizes the science of shoreland protection, the value of waterfront property, the past work that counties have put into creating and enforcing shoreland zoning ordinances, and the desire for flexibility in development coupled with the demand that the current levels of lake and river protection not be reduced.

What are the key provisions?

Lot Sizes

- Requirements for new lot sizes have not changed.
- Counties may allow development on smaller substandard lots if they were not legally combined, don't have a structure straddling a shared lot line, and can be built in compliance with all other shoreland requirements.

Building setbacks

- The minimum setback will continue to be 75 feet from the shoreline.
- Structures exempted by other state or federal laws can be allowed within 75 feet.
- Setback averaging is clarified, for areas where a pattern of development already exists.

Vegetation

- Vegetation is generally protected within the first 35-feet from the shoreline, to provide a more functional buffer protecting habitat and water quality.
- Within this buffer, property owners can clear vegetation for an access and viewing corridor, and they can continue mowing and other normal maintenance.
- Trees and shrubs can be removed within the buffer if they are exotic or invasive species, diseased or damaged, or an imminent safety hazard – but the removed trees and shrubs must be replaced.
- Trees and shrubs can be removed within the buffer as part of a sustainable forestry plan.

Impervious surfaces

- To provide habitat and protect water quality, counties must regulate the total percentage of impervious surface (IS) cover on lots in the shoreland zone.
- Scientific studies have shown that adverse impacts to water quality begin when 10% of the watershed that drains to it is made up of impervious surface – not just riparian lots. These adverse impacts increase as impervious surface increases.
- We have proposed that the total impervious surface allowance is 15%. This limit may be exceeded up to a maximum of 30%, if the property owner offsets the impacts of their development through some mitigation measures.

- Routine maintenance of all existing impervious surfaces is allowed, and at-grade structures like driveways and patios can be replaced as needed.
- Lots with more than 30% cover may not add more impervious surfaces if the addition increases the total area of impervious surface but owners can keep what they currently have.
- These impervious surface limitations apply to all lots within the shoreland zone, which is defined in statute as 300 feet from a river or stream, and 1,000 feet from a lake. Some citizens testifying at previous hearings advocated that the 1,000 foot limit from a lake be reduced to 300 feet. The public hearing draft of the rule used the 300-foot distance, but this provision was modified in response to public comment, and to create a balanced protection of water quality, habitat and natural scenic beauty in combination with other rule provisions that were relaxed. Some key provisions that were relaxed in response to public comment include:
 1. Increased the impervious surface allowance from a 10% general limit, and up to 20% if mitigation measures were implemented, to the proposed rule which allows a 15% general impervious surface limit and up to 30% with mitigation.
 2. Limited the 35 foot height restriction in the rule so that it applies only to structures within the first 75 feet from the water – it previously was proposed to apply up to 300 feet.
 3. Provided greater flexibility for property owners to expand or even rebuild existing structures that are closer than 75-feet from the water.

Application in unincorporated areas

- In accordance with statute – specifically s. 59.692 (1m) – the rule applies only in unincorporated areas. This has also been an area of comment, but I want to note that this is a statutory requirement that, as you know, cannot be altered through the administrative rule-making process.
- While people may disagree on this applicability provision, the department is taking the step to revise the shoreland zoning minimum requirements to improve water quality where it can.

Nonconforming structures and uses

- The 50% rule that limited the cost of improvements to nonconforming structure has been removed.
- The revisions allow continued lawful use and routine maintenance of nonconforming structures that are closer than 75-feet to the shoreline.
- The revisions allow for expansion of nonconforming principal structures located between 35 and 75 feet of the ordinary high-water mark with a county permit, provided key requirements are met, including mitigation to offset the impacts.
- Added provision allowing relocation of nonconforming principal structures within 75 feet of the ordinary high-water mark with a county permit, when no compliant building location exists, and provided key requirements are met, including mitigation to offset impacts.

Timeline

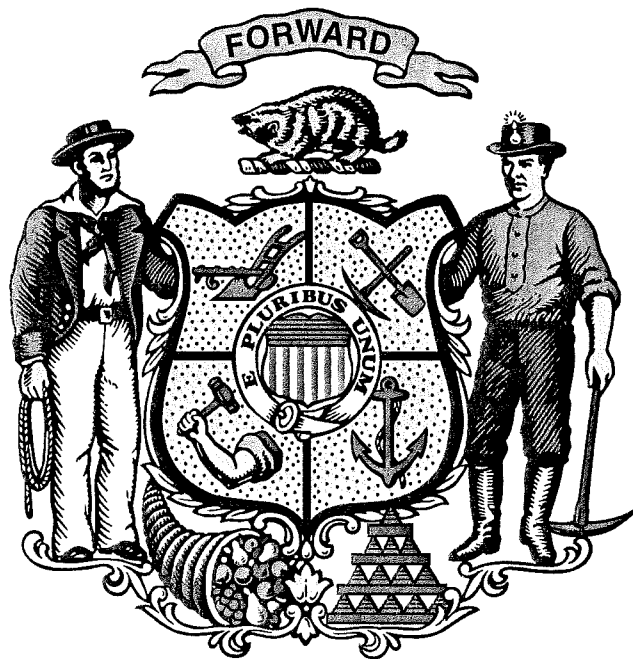
- Counties have two years to update their ordinances, from the date these rule revisions go into effect. DNR is developing model ordinance language to provide counties with standardized text.

Closing

In closing, there are a few things I'd like to point out about the proposed shoreland rule revisions:

1. **Nothing will change for property owners** when these revisions go into effect. They will not have to do anything just because the rules are revised - they can continue to enjoy the development they have, and maintain their structures. Only when a property owner wants to make a change, such as expanding an existing home or building a new structure, will the new provisions will apply to them.
2. **Counties play the lead role in protecting shorelands statewide**, through day-to-day administration of their local ordinances. Each county has unique landscapes, development patterns, and human and financial resources, so while NR 115 establishes statewide minimum standards, each county will be affected differently by these revisions. DNR acknowledges the great work that county zoning staff do every day, and we will continue to support them as they move forward with updating and implementing their shoreland ordinances.
3. **DNR takes a comprehensive approach to protecting our state's shorelands**, and regulation is only one element. Shorelands are protected through public ownership, and DNR property managers regularly maintain and restore shoreland habitat on state lands. Educational materials and programs, including demonstration sites showing sound shoreland practices, are widely available through DNR, UW-Extension, county offices, and local lake and river groups. \$775,000 in lake and river grants is available annually to support local governments and organizations with planning, education and incentive programs. While there will always be some controversy with shoreland zoning, providing consistent minimum standards is a critical tool - along with technical assistance, education and funding - is providing comprehensive shoreland protection in Wisconsin.
4. **The final rules have broad support.** I am happy to report that the final rules have broad support from a diverse array of groups including the Wisconsin Realtors Association, the Wisconsin Association of Lakes, the Wisconsin Builders Association and the River Alliance of Wisconsin. The rule package has also garnered support from several newspapers, including the editorial boards of the Milwaukee Journal Sentinel and the Wisconsin State Journal.

Thank you for your time and today. We ask your support for these rule revisions, and would be happy to answer any questions.





122 State Street, Suite 200, Madison, Wisconsin 53703-2500

Telephone: 608.251.7020 Fax: 608.251.1655

Website: www.cleanwisconsin.org

(Formerly Wisconsin's Environmental Decade)

September 10, 2009

Chairman Mark Miller, Senate Environment Committee
Members, Senate Environment Committee

RE: Clearinghouse rule 05-058: Revisions to NR 115 (Shoreland Zoning)

Dear Chairman Miller and Senate Environment Committee members;

Clean Wisconsin applauds the Department of Natural Resources and the wide array of stakeholders who were involved in this lengthy process for finally reaching a workable compromise on NR 115, and we urge your support of the revised rules.

This compromise was a long time in the making, and it is an important victory for the protection of Wisconsin's precious lake and river shorelands. The environmental and economic importance of reasonable limitations on building and otherwise modifying the natural environment in the shoreland area are well understood. The proposed rules are an improvement over the status quo for the environment, for the public owners of the waters of the state, and for those private landowners who are lucky enough to own shoreland property.

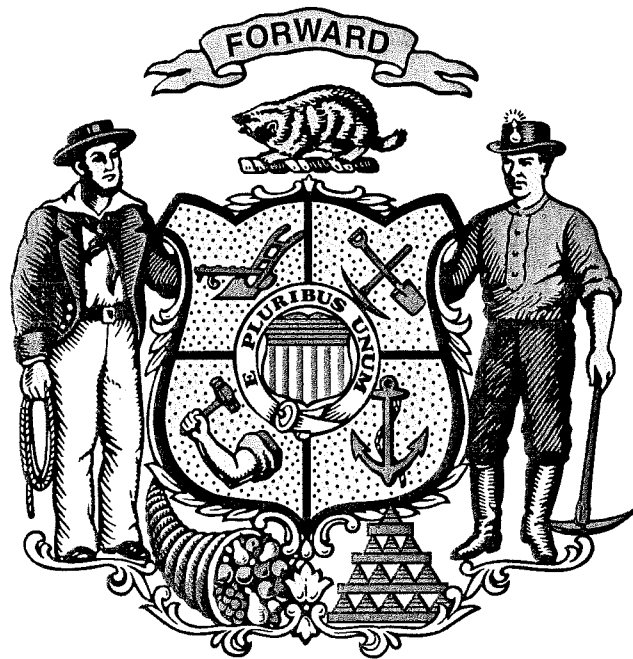
We understand the long hours of work and consideration of thousands of public comments that went into this compromise package. It represents an important balance between interests that seem, at times, to be at odds but that really, in the long run, share much common ground. The proposal provides both enhanced flexibility and greater certainty for landowners, and for the county agencies and staff across the state who administer shoreland zoning. It also works to ensure the long-term sustainability of Wisconsin's natural shoreland areas, a critical portion of the landscape for our third-largest economic sector, tourism, and one of the most important areas on the landscape for valued populations of fish, wildlife, birds and plants, including many of the state's threatened and endangered species.

The steps the rule package takes to limit the amount of impervious surface that can be created on shoreland properties, and its stronger limitations on activities that would destroy healthy, natural vegetative buffers between development and the water's edge, are reasonable steps forward. They reflect today's far better understanding of the science surrounding these issues.

We urge your support for the revised NR 115 rule package, and we again thank the DNR, stakeholder representatives, and the many members of the general public who have been heard to-date on this issue for their input and their hard work on this compromise. We look forward to this rule's swift promulgation. Thank you for your consideration.

Sincerely,

Mark Redsten
Executive Director, Clean Wisconsin





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Madison, Wisconsin 53703-2715

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800/991-5502
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E-mail: league@lwm-info.org
www.lwm-info.org

To: Senate Committee on Environment
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: September 10, 2009
Re: Comments on Proposed NR 115, Shoreland Zoning

While NR 115 applies primarily to county regulation of shorelands in unincorporated areas, the rule and the statute on which it is based, sec. 59.692(7), Wis. Stats., also regulates development in any shoreland areas that have been annexed into cities and villages since 1982.

The League opposes revised NR 115 because it continues to apply to annexed shorelands and fails to distinguish between shorelands within rural, undeveloped areas and annexed shorelands within urban or urbanizing areas. Under the proposed rule, the same setback, minimum lot size, building height, and maximum impervious surface standards apply to developments occurring along navigable waters regardless of whether the setting is rural or urban.

We realize that making NR 115 inapplicable to annexed shoreland areas would take a change in state law, specifically deleting sec. 59.692(7). We urge the Legislature to make that change. We believe that municipal governing bodies are in the best position to balance the competing interests and unique community values at stake when determining how to regulate development along urban waterfronts. Many of Wisconsin's incorporated areas are already required to comply with strict stormwater regulations that require management of stormwater to reduce sediments in the water before it enters our lakes and rivers. Similar requirements do not apply to most of rural Wisconsin.

NR 115 should at least be redrafted in a way that recognizes that urban waterfront development and redevelopment may and often should be dense, compact, have higher levels of impervious surface and exceed 35 feet in height. We urge the department to avoid applying a rural focused series of regulations designed to address the impacts that seasonal cabins and lake homes have on navigable waters to highly developed, urban environments.

We want to ensure that successful urban development and redevelopment projects like Madison's Monona Terrace, Milwaukee's River Walk, Kenosha's lake front redevelopment (where condominiums, walkways, museums and a marina have replaced brownfields) and Burlington's riverfront redevelopment project can occur in the future on land that has been annexed by a municipality.

STRONG COMMUNITIES MAKE WISCONSIN WORK

The rule as drafted will have the effect of encouraging sprawl by preventing dense, compact, multi-storied developments containing larger impervious surfaces along annexed shorelands within municipalities. This outcome clashes with the important goal of promoting denser developments and re-developments within incorporated municipalities where sewer and other urban services are available. The rule also conflicts with an important planning goal of creating housing close to where people work to cut down on commute times and transportation costs.

Another concern we have and have had about the rule and the underlying statutory law is that it creates a hodgepodge of zoning regulations for shoreland areas within municipalities depending on whether and when those areas were annexed to the municipality. Having different rules of development for shoreland parcels that might be adjacent to one another is confusing for municipal staff, developers and the general public.

Thanks for considering our comments on NR 115.

Requirements for Storm water Management

INCORPORATED MUNICIPALITIES

All incorporated municipalities with an average density of 1,000 people per square mile must, under s. NR 151.13(1), Wis. Adm. Code, comply with the following requirements:

- Have a public information and education program that promotes:
 - beneficial on-site reuse of leaves and grass clippings,
 - proper use of lawn and garden fertilizers and pesticides,
 - proper management of pet wastes and,
 - prevention of dumping oil and other chemicals in storm sewers.
- Have a municipal program, as appropriate, for the collection and management of leaf and grass clippings, including public education about this program.
- Apply lawn and garden fertilizers on municipally controlled properties of 5 acres or more, in accordance with a site specific nutrient application schedule based on appropriate soil tests.
- Detect and eliminate illicit discharges to storm sewers.

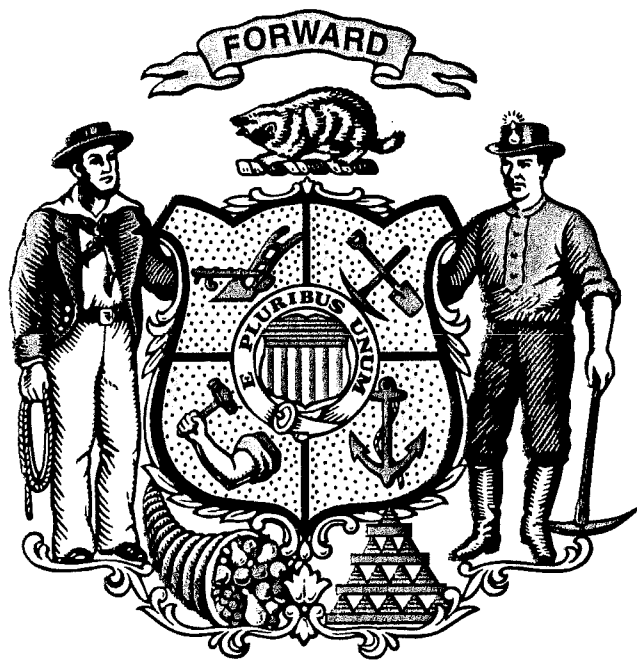
PERMITTED MUNICIPALITIES

In addition to the requirements listed above, municipalities subject to the municipal storm water permit requirements of subch. I of ch. NR 216, Wis. Adm. Code must:

- Promote the management of stream banks and shorelines by riparian landowners to minimize erosion and restore ecological values of the waterway,
- Promote infiltration of residential runoff from rooftop downspouts, driveways and sidewalks,
- Develop a program to:
 - Inform contractors and designers on how to design, install and maintain practices,
 - Work with target audiences on storm water pollution prevention,
 - Promote environmentally sensitive land development designs
- Conduct an extensive illicit discharge detection program that includes handling spills, eliminating leakage of sanitary sewage into the storm sewer system and on-site field screening of major outfalls.
- Develop a program to implement and maintain construction and post-construction practices at construction sites, including legal authority to enforce s. NR 151.11 and 151.12, Wis. Adm. Code
- By March 10, 2013, reduce total suspended solids by 40% in runoff that enters waters of the state.

Note: There are 217 permitted municipalities either in the sixteen urbanized areas of Wisconsin or outside the urbanized areas but with a population of 10,000 or more. The vast majority but not all are incorporated. Permitted

municipalities include cities, villages, some high density population towns, portions of some counties and university campuses.



September 29, 2009
Two Sisters Lake Property Owners Assoc. (TSLPOA)
6267 Wendt Road
Lake Tomahawk, WI 54539

Senator Mark Miller
Room 317 East
State Capital
Madison, WI 53707-7882

Subject; Proposed NR-115

Dear Senator Miller:

Among the purposes of TSLPOA in Oneida County are fostering and preserving environmental qualities of Two Sisters Lake, and zoning that will help achieve these objectives. We are concerned about some proposed provisions and increasing regulatory requirements in proposed NR-115 relative to impervious surface restrictions. When the Senate Committee on the Environment meets we desire for the committee to reconsider including the entire 1000 foot from the ordinary high water mark as the area for the 15% restriction on impervious surfaces.

Our organization would like the committee to follow Vilas County's current practice of applying this standard to only the first 300 feet from the water. In comparing two lots with 100 feet of water frontage and using the 15% allowable area for impervious surfaces ---

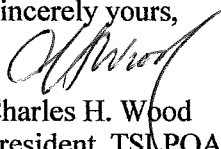
- a 300 foot deep lot could have 4,500 square foot allowance
- a 1000 foot deep lot would have 15,000 square foot allotment

Could the second (1000 foot deep lot) use the entire 15,000 square foot allowance within the first 300 feet from the water? Then if so, would this protect the water as desired or be seen as fair by a neighbor who only had a lot with 300 feet of depth?

Another item worthy of additional consideration is the proposed exemption for cities and towns vs un-incorporated areas. When the incorporated area and un-incorporated areas share a common body of water, how reasonable will this differential treatment be? Those of us who live up north really would like to see managed growth as expanding our tax base to spread the costs would benefit us all. Our water front property is a key element in growing rural property values.

Thank you for considering these comments on proposed NR-115

Sincerely yours,

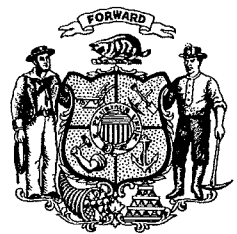


Charles H. Wood
President, TSLPOA

C: Senator Jim Holperin



WISCONSIN STATE LEGISLATURE



WISCONSIN Town of Oshkosh

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Date: September, 2009
To: NR115 Rewrite Review Committee Members
Re: **NEED CHANGES TO NR115 REWRITE**

The driving force behind this Shoreland Zoning Rewrite has been DNR obsession with mandatory buffers. H2O quality was the initial reason.

Municipal stormwater draining directly into State waters possibly requiring every city lot to have a front yard buffer quieted this issue. Natural beauty enhancement is the replacement justification.

The Town of Oshkosh suggested a voluntary property tax-incentive program several times in written and oral comments throughout the Rewrite process. A voluntary program would have willing participants rather than angry victims.

During negotiations, DNR lawyers stated a voluntary buffer program was "off the table".

The proposed mitigation rule hammers old plats with small lots. High taxes are paid on waterfront property for the view alone. Some riparian owners rebuilding won't accept a buffer. Worn-out structure will be patched instead of rebuilt and four-story (35') residential silos will sprout. This is not scenic beauty enhancement.

If you won't reconsider a voluntary property tax-incentive program, then at a minimum in old plats allow:

- 1) Setback averaging and principle structure replacement without mitigation.
- 2) 20% impervious surface standard.

These changes would encourage small structure replacement, clean up old properties, and enhance scenic beauty.

TOWN OF OSHKOSH

Respectfully,



Jim Erdman
Town Supervisor

JE/jbm

Cc: Gerald Frey, Town Chairman
Carol Kaufmann, Town Supervisor
Maribeth Gabert, Town Treasurer